

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
<i>In Re</i>)	Case No. 1:04-cv-12417PBS
)	
SECOND CHANCE BODY ARMOR, INC.,)	
)	
Debtor.)	
_____)	
THOMAS F. REILLY, as ATTORNEY GENERAL))	Case No. HT 04-12515JRH
of the Commonwealth of Massachusetts,)	Chapter 11
)	Jointly Administered
Plaintiff,)	
v.)	
)	(Removed from the Suffolk
SECOND CHANCE BODY ARMOR, INC.,)	Superior Court, No. 03-5450)
TOYOBO AMERICA, INC., and TOYOBO CO.)	
LTD.,)	
Defendant.)	
_____)	

**COMMONWEALTH'S MOTION TO EXTEND TIME TO MOVE
TO DISMISS TOYOBO'S PETITION FOR REMOVAL AND TO
OPPOSE ITS MOTION TO TRANSFER THIS CASE**

The Commonwealth of Massachusetts respectfully requests an extension of time, up until **December 6, 2004**, in which to file a Motion to Dismiss Toyobo's Notice of Petition and to oppose Toyobo's Motion to Transfer. In its opposition the Commonwealth will raise, *inter alia*, its Eleventh Amendment Immunity to this suit in Federal Court as it has not waived its immunity to bring suits or be sued (if at all) pursuant to M.G.L. c. 93, § 4 et seq., in the Federal Court. Additionally, the Commonwealth has grounds to challenge the applicability of the automatic stay in the state court litigation in the Massachusetts Superior Court due to Second Chance Body Armor's bankruptcy filing

pursuant to 11 U.S.C. § 362 (a) because Congress has exempted from the automatic stay a state government's exercise of its police and regulatory powers to protect its citizens' health, safety and welfare. 11 U.S.C. § 362 (b)(4); In the Matter of Commonwealth Oil Refinery, 805 F.2d 1175 at 1182 (5th Cir. 1986), *cert. denied* 483 U.S. 1005 (1987).

In the Commonwealth's lawsuit against Second Chance Body Armor and Toyobo, the Attorney General, on behalf of the citizens of Massachusetts, is exercising the special police powers granted him in M.G.L. c. 93A, § 4 to protect Massachusetts law enforcement personnel who purchased or are using Second Chance's defective bullet proof vests which were made from Zylon® fiber made and sold by Toyobo.

Wherefore, the Commonwealth respectfully requests additional time, until **December 6, 2004** to submit its Motion to Dismiss Toyobo's Petition to Remove and to Oppose Toyobo's Motion to Transfer.

**THE COMMONWEALTH HAS CONSULTED WITH TOYOBO'S COUNSEL AND
TOYOBO STATES THAT IT WILL NOT OBJECT TO THIS MOTION.**

COMMONWEALTH OF MASSACHUSETTS

By its Attorneys,

THOMAS F. REILLY
ATTORNEY GENERAL

/s/ Rosemary Connolly
/s/ Rosemary Connolly, BBO #548079
Matthew Q. Berge BBO #560319
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CERTIFICATE OF SERVICE

I, Rosemary Connolly, hereby certify that I have served the foregoing document upon the attorneys of record, by mailing a copy first class,. postage prepaid mail to:
Arvin Maskin, Weil, Gotshal & Manges, 767 Fifth Avenue, NY, NY 10153; Neil Motenko, Nutter, McClennen & Fish, World Trade Center West, 155 Seaport Boulevard, Boston, MA 02210; James Young General Counsel, Second Chance Body Armor, Inc., 7915 Cameron St., P.O. Box 578, Central Lake, MI 4962 and Rudolph Pierce, Goulston & Storrs, 400 Atlantic Ave., Boston, MA 02110.

/s/ Rosemary Connolly

/s/ Rosemary Connolly